

ITEL
Pullman
November 1, 1989

9-310A013

Itel Rail Corporation

55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

RECORDATION FEE 15878-14 FILED 1425

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

NOV 6 1989 -12 05 AM

INTERSTATE COMMERCE COMMISSION

Re: Amendment No. 1 to Lease Agreement dated as of October 4, 1988, between Itel Rail Corporation and McCloud River Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

~~Please record this Lease Agreement under a new recordation number.~~

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

McCloud River Railroad Company (Lessee)
325 Main Street
McCloud, California 96057

This Amendment adds to the Lease Agreement one hundred seventy-five (175) 73', 100-ton, Plate C, FBS centerbeam flatcars bearing reporting marks MR 9255-9279 and MR 30000-30149.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

AMENDMENT NO. 1 NOV 6 1989 -12 05 AM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 1 (the "Amendment") to that certain Centerbeam Flatcar Lease Agreement (the "Agreement") made as of October 4, 1988 between ITEL RAIL CORPORATION, as lessor ("Lessor"), and MCCLOUD RIVER RAILROAD COMPANY, as lessee ("Lessee"), is made this 12th day of (October), 1989 between Lessor and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor has leased to Lessee one hundred fifty-five (155) centerbeam flatcars bearing the reporting marks MR 9100-9254. (All items of equipment subject to the Agreement are hereinafter referred to as the "Cars" and "Car" shall mean an individual item of equipment.)
- B. Lessor and Lessee desire to add one hundred seventy-five (175) centerbeam flatcars to the Agreement.

NOW, THEREFORE, Lessor and Lessee agree to amend the Agreement as follows:

- 1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Amendment No. 1.
- 2. Effective upon the full execution of this Amendment, Equipment Schedules No. 2 and No. 3 attached hereto shall be added to and made part of the Agreement.
- 3. With respect only to the Cars described in Equipment Schedule No. 2, Section 2 of the Agreement shall be replaced by the following:

" 2. Term

- A. The term of the Agreement with respect to each Car described in Equipment Schedule No. 2 shall commence on the date such Car is remarked ('Delivery') and shall continue as to all of the Cars for five (5) years from the earlier of (i) the date on which the last Car was remarked or (ii) sixty (60) days from the date the first Car was delivered to the railroad lines of the Southern Railway of British Columbia (the 'Initial Term'). Upon the Delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit C attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date."

4. With respect only to the Cars described in Equipment Schedule No. 3, Section 2 of the Agreement is changed to Subsection 2.A. and Subsection 2.A. of the Agreement shall be amended as follows: (a) the word and number "ten (10)" in the second sentence shall be replaced by the word and number "seven (7)", (b) in Subsection 2.A.(ii) the words "Lessee's lines" shall be replaced by "the railroad lines of the Southern Railway of British Columbia" and (c) the words "Exhibit A" in the third sentence shall be replaced by the words "Exhibit C."
5. With respect only to the Cars described in Equipment Schedules No. 2 and No. 3, a new Subsection 2.B. is added to the Agreement.

" 2. B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed thirty-six (36) calendar months (each such calendar month an 'Extended Term'). Provided that the Cars are not subject to SRY Assignment No. 1 or SRY Assignment No. 2 (as defined in Subsection 3.A. hereinbelow), Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars by providing not less than ten (10) days' prior written notice."

6. With respect only to the Cars described in Equipment Schedule No. 2, the first four (4) sentences of Subsection 3.A. of the Agreement shall be deleted and replaced by the following sentence:

"When a Car has been remarked, it shall be moved to the railroad lines of the Southern Railway of British Columbia, Ltd. ('Assignee'), pursuant to the Agreement for Assigned Service dated as of September 25, 1989 ('SRY Assignment No. 1') between Lessee ('Assignor') and Assignee, a copy of which is attached hereto as Exhibit A."

7. With respect only to the Cars described in Equipment Schedules No. 3, the fourth sentence in Subsection 3.A. of the Agreement shall be replaced by the following:

"When a Car has been Delivered, it shall be moved to the railroad lines of the Southern Railway of British Columbia, Ltd. ('Assignee') pursuant to the Agreement for Assigned Service date September 25, 1989 ('SRY Assignment No. 2') between Lessee ('Assignor') and Assignee which is attached hereto as Exhibit B."

8. With respect only to the Cars described in Equipment Schedules No. 2 and No. 3, Subsection 3.D. of the Agreement shall be replaced by the following:

" 3. D. Lessor consents to Lessee's entering into the SRY Assignment No. 1 and SRY Assignment No. 2, except the duties described in paragraph six therein, which shall be performed by Lessee, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the SRY Assignment No. 1 and SRY Assignment No. 2, and that Lessee shall, if directed by Lessor,

assign Lessee's interest in the SRY Assignment No. 1 or the SRY Assignment No. 2 to any party designated by Lessor."

9. Section 5.A.(i) of the Agreement shall be amended by adding the following to the first sentence: "(f) is for the purpose of maintaining or replacing the loading tie-down devices of the Cars."

10. With respect only to the Cars described in Equipment Schedules No. 2 and No. 3, Section 8 of the Agreement shall be amended as follows:

A. Subsection 8.A.(iii) shall be replaced by the following:

"8. A. (iii) 'Revenues' is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, plus during the term of SRY Assignment No. 1 and SRY Assignment No. 2 ('Assignments') any loading allowance paid by the Southern Railway of British Columbia, Ltd. pursuant to the provisions of such Assignments, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee."

B. Subsection 8.B. shall be deleted and replaced by the following:

" 8.B. (i) Lessor shall receive
prior to and during the term of SRY Assignment No. 1 and SRY Assignment No. 2.

(ii) Upon the early termination or expiration of SRY Assignment No. 1 and/or SRY Assignment No. 2, Lessor
which were subject to such terminated or expired SRY Assignment No. 1 and/or SRY Assignment No. 2. while such Cars are off the Eligible Lines.

C. Subsection 8.F. shall be replaced by the following:

"8.F. If, during any time that SRY Assignment No. 1 or SRY Assignment No. 2 is not in effect, any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car traveling
miles per day."

D. A new Subsection 8.I. shall be added to the Agreement.

"8.I. If, with respect to any calendar quarter ('Quarter'), Revenues received by Lessor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than: 1)

per Car per
Quarter for the Cars described on Equipment Schedule No.
2 or 2)

per Car per Quarter for the Cars
described in Equipment Schedule No. 3 (each such amount
'Base Revenues'), then Lessor may so notify Lessee. Within
ten (10) days of receipt of such notice from Lessor, Lessee
shall either:

(i) Pay Lessor the difference ('Difference') between
the Base Revenues and the actual Revenues for such
Quarter and agree to pay the Difference for any
subsequent Quarter in which such Difference occurs
for the duration of the term of the Agreement with
respect to the Cars in this Schedule. Lessee shall
pay Lessor such Difference not later than sixty
(60) days after receiving an invoice for such
Difference.

(ii) Elect not to pay Lessor such Difference for such
Quarter. In such event, Lessor may terminate all
or any of the Cars from the Agreement upon not less
than thirty (30) days' written notice to Lessee
at any time during the duration of the Agreement."

11. Except as expressly modified by this or any other Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

12. This Amendment may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

By: Robert Kiehnle
Title: Vice President + Treasurer
Date: October 12, 1989

MCCLOUD RIVER RAILROAD COMPANY

By: Jeff Ford
Title: President
Date: October 6, 1989

EQUIPMENT SCHEDULE NO. 2

ITEL RAIL CORPORATION ("Lessor") hereby leases the following Cars to MCCLOUD RIVER RAILROAD COMPANY ("Lessee") subject to the terms and conditions of that certain Centerbeam Flatcar Lease Agreement dated as of October 4, 1988 between Lessor and Lessee.

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
FBS	100-Ton, Plate C, Centerbeam Flatcars	MR 9255-9279	73'0"	4'2-1/2"	11'2-1/2"	25

ITEL RAIL CORPORATION

By:

Robert Kielule

Title:

Vice President & Treasurer

Date:

October 12, 1989

MCCLOUD RIVER RAILROAD COMPANY

By:

Jeff Ford

Title:

President

Date:

October 6, 1989

EQUIPMENT SCHEDULE NO. 3

ITEL RAIL CORPORATION ("Lessor") hereby leases the following Cars to MCCLLOUD RIVER RAILROAD COMPANY ("Lessee") subject to the terms and conditions of that certain Centerbeam Flatcar Lease Agreement dated as of October 4, 1988 between Lessor and Lessee.

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
FBS	100-Ton, Plate C, Centerbeam Flatcars	MR 30000-30149	73'0"	4'2-1/2"	11'2-1/2"	150

ITEL RAIL CORPORATION

By: Robert Kiehnle
Title: Vice President + Treasurer
Date: October 12, 1989

MCCLLOUD RIVER RAILROAD COMPANY

By: Jeff Forlin
Title: President
Date: October 6, 1989

EXHIBIT A

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this 25th day of September, 1989 between MCCLOUD RIVER RAILROAD COMPANY ("Assignor") and THE SOUTHERN RAILWAY OF BRITISH COLUMBIA, LTD. ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
FBS	100-Ton, Plate C, Centerbeam Flatcars	MR 9255-9279	73'0"	4'2-1/2"	11'2-1/2"	25

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. A. The term ("Initial Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars five (5) years from the earlier of (i) the date that the last Car was Delivered or (ii) the sixtieth (60th) day after the date that the first Car was Delivered. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date.

B. If the Assignment Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Assignment Agreement, the Assignment Agreement shall automatically

be extended for three (3) consecutive periods of twelve (12) months each (each such period an "Extended Term") with respect to all of the Cars, provided that Assignor or Assignee may terminate the Assignment Agreement at the end of the Initial Term or at the end of any Extended Term as to some or all of the Cars by providing not less than ninety (90) days' prior written notice to the other.

4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or interchanged from other railroads; provided, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given preference to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor per Car per day for each day such Car is on Assignee's railroad line due to such failure.
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - A. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties and up to fifty (50) miles of any railroad lines owned and/or operated by Assignee subsequent to the execution of this Assignment Agreement. Unless Assignor and Assignee agree otherwise, any line purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Assignee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.
 - B. "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1989 edition of The Official Railway Equipment Register.

- C. "Revenues" is defined as the total revenues calculated at the Revenue Rates, that are earned for the use or handling of the Cars on the railroad lines other than the Eligible Lines, including but not limited to, per diem and mileage, whether or not collected and received by Assignor and undiminished by any claimed abatement, reduction or offset caused by any action or inaction of Assignee.
- D. "Load Fee" is defined as a loading allowance of
paid by Assignee to Assignor for each Car that is: 1) loaded by Assignee, 2) routed to a destination off Assignee's lines and 3) subject to a reduction of the collected Revenues ("Load Fee Car(s)") pursuant to an agreement ("Agreement") between Assignee and the Burlington Northern Railroad Company ("BN"), which provides that BN
8. Assignee shall be entitled to full per diem and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
9. Assignee agrees to pay rent to Assignor for the Cars calculated as follows:
- A. Assignor shall
- B. Assignee shall pay to Assignor within ninety (90) days after the end of each Service Month (as hereinafter defined) the Load Fee for such Service Month. "Service Month" shall be defined as the calendar month in which Assignee shall load and route any Car to a destination off the lines of Assignee.
- C. Ninety (90) days after the end of each Service Month (as defined in Subsection 9.B. hereinabove), Assignee shall provide Assignor with a report listing the Load Fee Cars for such Service Month ("Service Month Report"). The Service Month Report shall include, (1) a copy of the waybill and (2) the reporting marks and number of each Load Fee Car.
10. Upon the expiration or early termination of the Agreement between BN and Assignee, Assignee shall notify Assignor of such expiration or early termination and upon Assignor's receipt of such notification, Subsections 9.B. and 9.C. hereinabove shall no longer apply.
11. Except as to the Agreement between BN and Assignee, upon any abatement, reduction or offset caused by any action or inaction of Assignee, as set forth in Subsection 7.C. hereinabove, Assignee shall, within ten (10) days of Assignor's request, reimburse Assignor for such amount.
12. If, for any Quarter, Revenues (plus, during the term of the Agreement between BN and Assignee, the Load Fees paid by Assignee to Assignor) received by Assignor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than
per Car
per Quarter ("Base Revenues"), then Assignor may so notify Assignee.

Within ten (10) days of receipt of such notice from Assignor, Assignee may either:

A. Pay Assignor the difference ("Difference") between the Base Revenues and the actual Revenues for such Quarter, and agree to pay Assignor the Difference for any subsequent Quarter in which such Difference occurs for the duration of this Assignment Agreement. Assignee shall pay Assignor such Difference not later than sixty (60) days after receiving an invoice for such Difference.

B. Elect not to pay Assignor such Difference for such Quarter. In such event, Assignor may terminate all or any of the Cars from this Assignment Agreement upon not less than ten (10) days' written notice to Assignee at any time during the duration of the Term.

13. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.

14. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) maintenance of the tie down cable assemblies; (ii) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (iii) damage for which Assignee is responsible under applicable AAR Rules; (iv) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs as provided in Exhibit B attached hereto, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.

15. Assignee agrees to pay to Assignor, within thirty (30) days of receipt of the receipted copy of the bill paid by Assignor, all Canadian: taxes, fees, levies, imposts, duties or withholdings of any nature, and associated penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the Assignment Agreement or delivery of the Cars and (3) the revenues earned by the Cars, including but not limited to, mileage charges and/or car hire revenues earned during the term of the Assignment Agreement.

16. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal

wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed under the Assignment Agreement, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option, Assignee shall use its best efforts to provide final outbound loads for each Car.

17. Assignee's rights shall be subject and subordinate to the rights of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
18. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

McCloud River Railroad
Company
55 Francisco Street
San Francisco, CA 94133
Attention: Manager, Car Hire
Accounting

If to Assignee:

The Southern Railway of British
Columbia, Ltd.
5935 Glover Road
Langley, British Columbia V3A 4B5
Attention: President

19. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
20. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

MCCLOUD RIVER RAILROAD COMPANY

By: W. J. Hume

Title: CHAIRMAN OF BOARD

Date: 9/25/89

THE SOUTHERN RAILWAY OF BRITISH
COLUMBIA, LTD.

By: L. J. Stewart

Title: PRESIDENT

Date: 19 SEPT 1989

EXHIBIT A

Certificate of Delivery

Agreement for Assigned Service dated _____, 1989

Assignor's
Reporting
Marks and Numbers

Date Delivered
to Assignee

The Initial Term of the Assignment Agreement dated _____, 1989
between McCloud River Railroad Company and The Southern Railway of British
Columbia, Ltd., shall expire on _____, 1994.

MCCLOUD RIVER RAILROAD COMPANY

By: _____

Title: _____

Date: _____

EXHIBIT B

Running Repairs: Centerbeam Flatcars

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers .
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Ladders
Brake Beams and Levers	Side Bearing Mounts
Truck Springs	

EXHIBIT B

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this 25th day of September, 1989 between MCCLOUD RIVER RAILROAD COMPANY ("Assignor") and THE SOUTHERN RAILWAY OF BRITISH COLUMBIA, LTD. ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
FBS	100-Ton, Plate C, Centerbeam Flatcars	MR 30000-30149	73'0"	4'2-1/2"	11'2-1/2"	150

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3.
 - A. The term ("Initial Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars seven (7) years from the earlier of (i) the date that the last Car was Delivered or (ii) the sixtieth (60th) day after the date that the first Car was Delivered. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date.
 - B. If the Assignment Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Assignment Agreement, the Assignment Agreement shall automatically be extended for three (3) consecutive periods of twelve (12) months each (each such period an "Extended Term") with respect to all of

the Cars, provided that Assignor or Assignee may terminate the Assignment Agreement at the end of the Initial Term or at the end of any Extended Term as to some or all of the Cars by providing not less than ninety (90) days' prior written notice to the other.

4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or interchanged from other railroads; provided, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given preference to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor per Car per day for each day such Car is on Assignee's railroad line due to such failure.
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - A. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties and up to fifty (50) miles of any railroad lines owned and/or operated by Assignee subsequent to the execution of this Assignment Agreement. Unless Assignor and Assignee agree otherwise, any line purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Assignee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.
 - B. "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1989 edition of The Official Railway Equipment Register.

- C. "Revenues" is defined as the total revenues calculated at the Revenue Rates, that are earned for the use or handling of the Cars on the railroad lines other than the Eligible Lines, including but not limited to, per diem and mileage, whether or not collected and received by Assignor and undiminished by any claimed abatement, reduction or offset caused by any action or inaction of Assignee.
- D. "Load Fee" is defined as a loading allowance of
paid by Assignee to Assignor for each Car that
is: (1) loaded by Assignee, (2) routed to a destination off Assignee's lines and (3) subject to a reduction of the collected Revenues ("Load Fee Car(s)") pursuant to an agreement ("Agreement") between Assignee and the Burlington Northern Railroad Company ("BN") which provides that BN
8. Assignee shall be entitled to full per diem and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
9. Assignee agrees to pay rent to Assignor for the Cars calculated as follows:
- A. Assignor shall
- B. Assignee shall pay to Assignor within ninety (90) days after the end of each Service Month (as hereinafter defined) the Load Fee for such Service Month. "Service Month" shall be defined as the calendar month in which Assignee shall load and route any Car to a destination off the lines of Assignee.
- C. Ninety (90) days after the end of each Service Month (as defined in Subsection 9.B. hereinabove), Assignee shall provide Assignor with a report listing the Load Fee Cars for such Service Month ("Service Month Report"). The Service Month Report shall include, (1) a copy of the waybill and (2) the reporting marks and number of each Load Fee Car.
10. Upon the expiration or early termination of the Agreement between BN and Assignee, Assignee shall notify Assignor of such expiration or early termination and upon Assignor's receipt of such notification, Subsections 9.B. and 9.C. hereinabove shall no longer apply.
11. Except as to the Agreement between BN and Assignee, upon any abatement, reduction or offset caused by any action or inaction of Assignee, as set forth in Subsection 7.C. hereinabove, Assignee shall, within ten (10) days of Assignor's request, reimburse Assignor for such amount.
12. If, for any Quarter, Revenues (plus, during the term of the Agreement between BN and Assignee, the Load Fees paid by Assignee to Assignor) received by Assignor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than
per Car per
Quarter ("Base Revenues"), then Assignor may so notify Assignee. Within ten (10) days of receipt of such notice from Assignor, Assignee may either:

- A. Pay Assignor the difference ("Difference") between the Base Revenues and the actual Revenues for such Quarter, and agree to pay Assignor the Difference for any subsequent Quarter in which such Difference occurs for the duration of this Assignment Agreement. Assignee shall pay Assignor such Difference not later than sixty (60) days after receiving an invoice for such Difference.
 - B. Elect not to pay Assignor such Difference for such Quarter. In such event, Assignor may terminate all or any of the Cars from this Assignment Agreement upon not less than ten (10) days' written notice to Assignee at any time during the duration of the Initial Term or any Extended Term.
13. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.
14. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) maintenance of the tie down cable assemblies; (ii) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (iii) damage for which Assignee is responsible under applicable AAR Rules; (iv) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs as provided in Exhibit B attached hereto, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.
15. Assignee agrees to pay to Assignor, within thirty (30) days of receipt of the receipted copy of the bill paid by Assignor, all Canadian: taxes, fees, levies, imposts, duties or withholdings of any nature, and associated penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the Assignment Agreement or delivery of the Cars and (3) the revenues earned by the Cars, including but not limited to, mileage charges and/or car hire revenues earned during the term of the Assignment Agreement.
16. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed

under the Assignment Agreement, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option, Assignee shall use its best efforts to provide final outbound loads for each Car.

17. Assignee's rights shall be subject and subordinate to the rights of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
18. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

McCloud River Railroad
Company
55 Francisco Street
San Francisco, CA 94133
Attention: Manager, Car Hire
Accounting

If to Assignee:

The Southern Railway of British
Columbia, Ltd.
5935 Glover Road
Langley, British Columbia V3A 4B5
Attention: President

19. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
20. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

MC CLOUD RIVER RAILROAD COMPANY

By: W. J. Hume

Title: CHAIRMAN OF BOARD

Date: 9/25/89

THE SOUTHERN RAILWAY OF BRITISH
COLUMBIA, LTD.

By: D. J. Stewart

Title: PRESIDENT

Date: 13 SEPT 1989

EXHIBIT A

Certificate of Delivery

Agreement for Assigned Service dated _____, 1989

Assignor's
Reporting
Marks and Numbers

Date Delivered
to Assignee

The Initial Term of the Assignment Agreement dated _____, 1989
between McCloud River Railroad Company and The Southern Railway of British
Columbia, Ltd., shall expire on _____, 19__.

MC CLOUD RIVER RAILROAD COMPANY

By: _____

Title: _____

Date: _____

EXHIBIT B

Running Repairs: Centerbeam Flatcars

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Ladders
Brake Beams and Levers	Side Bearing Mounts
Truck Springs	

EXHIBIT C

CERTIFICATE OF DELIVERY DATE

Exhibit A to Amendment No. 2 dated as of _____, 1989 by and between ITEL RAIL CORPORATION ("Lessor") and MCCLOUD RIVER RAILROAD COMPANY ("Lessee"), to the Centerbeam Flatcar Lease Agreement dated as of October 4, 1988, by and between Lessor and Lessee.

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be

_____.

ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

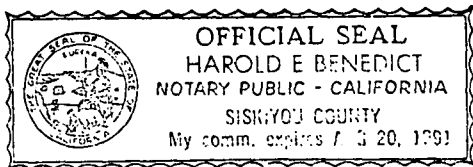
On this 12th day of October, 1989, before me personally appeared Robert Kiehle, to me personally known, who being by me duly sworn says that such person is Vice President and Treasurer of IteI Rail Corporation, that the foregoing Amendment No. 1 and Equipment Schedules No. 2 and No. 3 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

On this 6th day of October, 1989, before me personally appeared Jeff E. Forbis, to me personally known, who being by me duly sworn says that such person is President and Chief Executive Officer of McCloud River Railroad Company that the foregoing Amendment No. 1 and Equipment Schedules No. 2 and No. 3 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of said corporation.



Harold E. Benedict
Notary Public